

**CIVIL SERVICE COMMISSION MINUTES  
DECEMBER 5, 2007**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel  
W. Dale Bailey  
Cheryl Fisher  
A.Y. Casillas  
Barry I. Newman

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamar, Executive Officer  
William D. Smith, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved  
Civil Service Commission  
January 16, 2008**

COUNTY OF SAN DIEGO  
CIVIL SERVICE COMMISSION MINUTES  
DECEMBER 5, 2007

1:30 P.M.            CLOSED SESSION: Discussion of Personnel Matters  
                         and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San  
                         Diego, California

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3,4,6			

COMMENTS: Motion by Newman to approve all items not held for  
discussion; seconded by Casillas. Carried.

**CLOSED SESSION AGENDA**  
County Administration Center, Room 400B  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this  
location to hear the announcement of the  
closed session agenda.

- A. Commissioner Casillas: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b))  
Julie Buechler, Esq., on behalf of **2007-14**,  
appealing an Order from the Sheriff's Department.
- B. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED  
LITIGATION (54956.9(C)) One potential case.

**OPEN SESSION AGENDA**  
County Administration Center, Room 358

**Re Item B Closed Session:** William D. Smith, Sr. Deputy County  
Counsel, announced in Open Session that the Civil Service  
Commission did authorize the Office of County Counsel to apply to  
the Superior Court for an Order involving subpoenas.

## MINUTES

1. Approval of the Minutes of the regular meeting of November 7, 2007.

**Approved.**

## CLASSIFICATION REVIEWS

### Requests

2. Dennis J. Hayes, Esq. on behalf of **Albert Bradley, Michael Dealy, Mary Ellen Heppner, Mary Ann Knockeart, John Lee, Jeffrey Martin, George Osper, George Peterson, Roberto Quinones Jr., Jeffery Reichert, Dale Santee, Barton Sheela III, Liesbeth Vandenbosch, and Steven Wadler**, Deputy Alternate Public Defenders IV, Office of the Alternate Public Defender, requesting a classification review under Civil Service Rule XII.

RECOMMENDATION: Assign a Hearing Officer.

President Krauel announced that **Mary Ellen Heppner and John Lee** have withdrawn their requests.

**Staff Recommendation approved. Commissioner Casillas assigned.**

## DISCIPLINE

### Findings

3. Commissioner Casillas: Julie Buechler, Esq., on behalf of **2007-14**, appealing an Order from the Sheriff's Department.  
(Continued from the November 7, 2007 meeting.)

### FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2007-14 (hereinafter referred to as "Employee"), from a written Order of Termination and Charges terminating Employee from the class and position of Deputy Sheriff-Detentions/Court Services (Class No. 5757) in the Sheriff's Department (hereinafter referred to as "Department") was presented to the Civil Service Commission. The Commission appointed Commissioner A. Y. Casillas, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on September 25, 2007.

Employee was a Deputy Sheriff-Detentions who was terminated for dishonestly calling in sick to attend a wedding and for

violating the Department's "Associations" policy by maintaining a relationship with a person who Employee knew, or had reason to know, had sex with a minor and was convicted for this offense. The central facts were stipulated. Employee knew of the accusation, prosecution and conviction of this person, but continued to associate with him while employed by the Department. The crime at issue had attracted widespread media attention. While Employee's initial association with this person predated his criminal conduct, and both the association and the crime predated Employee's employment with the Department, the association continued thereafter. The association continued even after the associated person moved to Colorado. In fact, Employee dishonestly called in sick to attend the wedding of the associated person's son. Employee had acknowledged receiving the Department's Policies and Procedures, including the policy prohibiting such relationships, and Employee was at least vaguely aware of such policy. This act of dishonesty in abusing sick leave compounded the misconduct. Employee's offers of mitigation, e.g. ignorance of the specifics of the policy and the expectation that the Department would deny Employee's leave request to attend the wedding, were not compelling. Also, even though Employee argued that the association with this person was incidental to the friendship between Employee's son and the son of the associated person, the evidence established that Employee's association with him was more than just incidental to contacts between their sons. It is therefore recommended that that the Order of Termination be affirmed; that the Commission approve and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations; seconded by Newman. Discussion:**

**Commissioner Krauel:** "I'm voting NO on this matter because the facts, in my opinion, do not support termination. Any improper association of the deputy with his friend occurred in the period of 2003 to May of 2005. According to the stipulated facts presented in this case, there was no violation of the association policy between the period of May of 2005 to June of 2007. Whatever impact the 2003-2005 violation of the association policy might have had two years earlier, there is no current impact for the two years preceding the termination proceedings.

Finally, the isolated incidence of misuse of sick leave does not justify termination.

AYES:	BAILEY, FISHER, CASILLAS, NEWMAN
NOES:	KRAUEL
ABSENT:	NONE
ABSTENTIONS:	NONE

## DISCRIMINATION

### Findings

4. Commissioner Fisher: **Fred Kuhlman**, Senior Equipment Operator, alleging retaliation and age discrimination by the Department of Public Works. (Continued from the October 3, 2007 and November 7, 2007 meetings.)

#### FINDINGS AND RECOMMENDATIONS:

Frank Clowney, Esq. on behalf of Mr. Kuhlman addressed the Commission:

He gave reasons why Mr. Kuhlman should be granted a hearing due to witness testimony alleging that Mr. Kuhlman's supervisor made age discrimination remarks. Also, that Mr. Kuhlman has been performing his former duties in an unofficial capacity, showing his competence to do so.

Laurie Szymanski, Sr. Departmental Personnel Office for the Department, explained that Mr. Bauman, who allegedly made the age discrimination remarks, was not a part of Mr. Kuhlman's selection process and is now retired. She further commented that the witnesses interviewed had all been disciplined or terminated.

Commissioner Fisher reported:

At the regular meeting of the Civil Service Commission (Commission) on July 18, 2007, the Commission appointed Cheryl Fisher to investigate the complaint submitted by Fred Kuhlman, which alleged retaliation and age discrimination by the Department of Public Works. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission. This Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's

Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Mr. Kuhlman's Rule VI discrimination complaint be denied; that the Commission remove its Temporary Order to the Department of Public Works barring it from filling one of the Sanitation Regional Supervisor positions in the Wastewater Division; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Fisher to approve Findings and Recommendations; seconded by Casillas. Unanimously Carried.**

## **SELECTION PROCESS**

### **Findings**

5. **Nathaniel Duchein**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item No. 5 Ratified.**

## **OTHER MATTERS**

### **Performance Appraisal**

6. **2007-16**, Sheriff's Department, requesting the sealing of a Performance Appraisal covering the period May 2, 2006 to May 1, 2007.

RECOMMENDATION: Deny Request

Joan Wright addressed the Commission requesting the sealing of her performance appraisal because it was issued untimely by approximately 4 months.

Commissioner Newman reiterated his position regarding the sealing of performance appraisals: He is willing to seal if facts are presented to him, as one person on the Commission, that had an appraisal been timely, one would have been able to do something else, i.e., present a witness who is no longer available, but would have been available had it been done in a timely fashion.

Commissioner Newman asked Ms. Wright if any of her concerns would have been different if the performance appraisal had been issued timely, and whether she had been harmed because it was issued late.

Ms. Wright replied that if the performance appraisal had been timely, she would have had more time to discuss concerns with her supervisor and the issues would have been more current.

**Motion by Newman to accept staff recommendation to deny request; seconded by Fisher. Carried.**

<b>AYES:</b>	<b>BAILEY, FISHER, CASILLAS NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>NONE</b>
<b>NOT PARTICIPATING:</b>	<b>KRAUEL</b>

**Extension of Temporary Appointments**

7. Health and Human Services Agency

1 Residential Care Worker II (Sadia Ali)

RECOMMENDATION: Ratify.

**Item No. 7 ratified.**

8. Public Input.

ADJOURNED: 3:08 P.M.

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:**

**JANUARY 16, 2008**